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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/540,128	06/21/2005	Toshiharu Iwasaki	Q74675	8881
23373 7590 03/14/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			EXAMINER AUGHENBAUGH, WALTER	
			ART UNIT	PAPER NUMBER
			1794	
			MAIL DATE	DELIVERY MODE
			03/14/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/540,128

**Applicant(s)**

IWASAKI ET AL.

**Examiner**

WALTER B. AUGHENBAUGH

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/88)  
Paper No(s)/Mail Date 6/21/05
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### *Specification*

1. The abstract of the disclosure is objected to because legal phraseology such as “comprising” (lines 2 and 9), “comprises” (line 4) and “selected from the group consisting of” (line 5) should be avoided, and since it is unclear what the “xylene-soluble portion” (line 11) is a portion of: a portion of polymer (A), of polymer (B), the mixture of polymers (A) and (B), or a portion of an intermediate product of the composition?

Correction is required. See MPEP § 608.01(b).

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 1, the recitation “the refractive index of the xylene-soluble portion is from 1.480 to 1.495” renders the claim indefinite because it cannot be ascertained what the “xylene-soluble portion” (line 11) is a portion of: a portion of polymer (A), of polymer (B), the mixture of polymers (A) and (B), or a portion of an intermediate product of the composition?

In regard to claim 5, the recitation “has a second high-density polyethylene layer” renders the claim indefinite because claim 5 does not recite a first high-density polyethylene layer, so it cannot be ascertained whether or not Applicant intends to recite that the film or sheet comprises two separate high-density polyethylene layers.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Nakae et al. (USPN 5,089,323).

In regard to claim 1, Nakae et al. teach a container (col. 3, lines 64-66) that comprises a sheet having a layer that comprises, for example, a mixture of a propylene block copolymer and an ethylene/alpha olefin copolymer having four or more carbon atoms (col. 3, lines 25-49). The recitation "the refractive index of the xylene-soluble portion is from 1.480 to 1.495" has not been given patentable weight since it is directed to a property that does not characterize the claimed final product: this recitation characterizes a "portion" of the polyolefin resin composition, and therefore a "portion" of the claimed container, that does not exist in a separate, identifiable, form in the claimed final product.

In regard to claim 2, Nakae et al. teach that a preferred material for the ethylene/alpha olefin copolymer is an ethylene/alpha olefin copolymer that has 18 to 45% by weight of a xylene extractable content (col. 3, lines 40-45), a range that overlaps with the claimed content range.

In regard to claim 3, the ratio of the melt flow rates of the two polymers of the mixtures taught by Nakae et al. fall within and/or overlap with the claimed ratio range of from 0.3 to 3.0 since the disclosed melt flow rates of the various suitable polymers for the mixture result in

ratios that fall within and/or overlap with the claimed ratio range (col. 6, lines 40-48 and col. 7, lines 20-30).

In regard to claim 4, Nakae et al. teach that the sheet has a high density polyethylene layer that is disposed in the inner side of the container in the instance where the mixture includes high density polyethylene (col. 3, lines 25-49).

In regard to claim 5, Nakae et al. teach that the sheet has a high density polyethylene layer that is disposed in the inner side of the container in the instance where the mixture includes high density polyethylene (col. 3, lines 25-49).

In regard to claims 6 and 7, the mixture of Nakae et al., in the instance where the mixture includes high density polyethylene, falls within the scope of the recitation of claims 6 and 7 that the high density polyethylene be present in the layer in an amount of 20 mass% or more (col. 3, lines 25-49). High density polyethylene has a density of  $0.950 \text{ g/cm}^3$  or more, as evidenced by USPN 7,317,045 to Zanchetta et al. at col. 6, lines 25-36.

In regard to claim 8, the thickness of the resin layer of Nakae et al. occupies 100% of the entire thickness of the sheet (col. 3, lines 25-49).

### ***Conclusion***

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is (571) 272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris, can be reached on (571) 272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Walter B Aughenbaugh /  
Patent Examiner, Art Unit 1794  
02/28/08